



U.S. Department of Justice

 United States Attorney
 Southern District of New York

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April 20, 2023

By ECF
 Hon. Colleen McMahon
 United States District Court Judge
 United States Courthouse
 500 Pearl Street
 New York, New York 10007

 Re: *Crisostomo v. United States of America,*
 22-CV-9804

Dear Judge McMahon:

This Office represents the United States of America ("Defendant") in the above-captioned action. I am writing to request that the Court enter a revised scheduling order in this case.

By way of background, the Court previously extended the deadline for the government to respond to Plaintiff's complaint to April 14, 2023 and adjourned the initial pretrial conference in this case to April 27, 2023. *See* Dkt. No. 10. On April 14th, however, Plaintiff filed an amended complaint with the consent of Defendant. Dkt. No. 11. Three days later, the Court notified Plaintiff that the pleading had been filed deficiently and needed to be refiled. *See* Apr. 17, 2023 Notice. Plaintiff has not yet refiled her amended complaint as of the filing of this letter, but Defendant understands Plaintiff intends to refile the amended complaint in the near term.

Once Plaintiff refiles and serves her amended complaint, Defendant intends to move for dismissal under Federal Rule of Civil Procedure 12(b)(1). Defendant's motion will argue that the Court lacks subject matter jurisdiction over this action because Plaintiff failed to meaningfully participate in the statutorily required administrative claims process before she filed this lawsuit. Defendant has already met and conferred with Plaintiff about this anticipated motion, but the parties have reached an impasse.

In light of this context, Defendant proposes the following schedule:

- Plaintiff shall refile and serve her amended complaint by May 4, 2023.
- Defendant shall file its motion to dismiss by June 6, 2023.
- Plaintiff shall file her opposition brief by July 6, 2023.
- Defendant shall file its reply brief by July 20, 2023.
- The parties shall jointly file a case management plan two weeks after the resolution of Defendant's motion to dismiss, in the event the motion is not granted in full.

4/24/23
 OK - but
 no more
 24 hours
 This is your
 schedule
 Colleen McMahon

- The April 27th initial pretrial conference will be adjourned until such time as the Court deems appropriate.

This letter constitutes the second request to adjourn the initial pretrial conference date and the first request to extend the deadline to respond to Plaintiff's Amended Complaint. Plaintiff does not consent to Defendant's request. In an email, Plaintiff's counsel explained as follows: "I don't see a point of consenting to anything if you are planning to file a motion to dismiss."

Thank you for the Court's consideration of this request.

Respectfully,

DAMIAN WILLIAMS

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/s/ Jeremy M. Liss

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